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EXAMINER

CINTINS, IVARS C

ART UNIT

PAPER NUMBER

1724

DATE MAILED: 04/15/2003

28

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.  
09/325,599

Applicant(s)  
De Gheldere et al.

Examiner  
Ivars Cintins

Art Unit  
1724



-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on Mar 26, 2003
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 24-29, 31, 33, 34, and 37-41 is/are pending in the application.
- 4a) Of the above, claim(s) \_\_\_\_\_ is/are withdrawn from consideration
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 24-28, 31, 33, 34, and 39-41 is/are rejected.
- 7) ☒ Claim(s) 29, 37, and 38 is/are objected to.
- 8) ☐ Claims \_\_\_\_\_ are subject to restriction and/or election requirement

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner  
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some\* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\*See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).  
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s). \_\_\_\_\_ 6) ☐ Other: \_\_\_\_\_

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Prosecution before the Primary Examiner is hereby reopened.

Accordingly, the Final Rejection dated December 31, 2002 is withdrawn; and the proposed amendment filed March 26, 2003 has been entered.

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claim 40 is rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor, at the time the application was filed, had possession of the claimed invention. The limitation that the processing set includes a holder for temporarily holding "at least" the second container does not appear to be supported by the disclosure originally filed, and hence constitutes **new matter**. Applicant should note that the specification only discloses a holder 260 which holds both the second 210 and third 214 containers (see page 29, line 26 through page 31, line 8). Nowhere does the specification suggest that only the second container could be present in the holder.

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Accordingly, the subject matter of claim 40 was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor, at the time the application was filed, had possession of the claimed invention.

Also, Applicant should note that the term "wherein further" (claim 41, lines 1-2) does not appear to be grammatically

correct. Applicant should consider deleting the term "wherein" from line 1 of this claim.

Furthermore, the title, "PROCESSING SET AND METHODS FOR PROCESSING AND TREATING A BIOLOGICAL FLUID" is objected to as being misdescriptive, since a method of treating a biological fluid is no longer being claimed. Applicant should delete the term "AND METHODS" from the title of the invention.

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 24, 26, 28, 31 and 39 are rejected under 35 U.S.C. 102(b) as being anticipated by Chou (U.S. Patent No. 5,468,373). Chou discloses a device comprising a first container 12a, or 14 in combination with 12a (i.e. 10), made of a

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transparent material (see col. 2, line 54), a second container 14 or 20 integrally connected to the first container (see Fig. 1), an openable flow path 121 or 64 between the first and second containers, and an adsorbent material (see col. 2, lines 21 and 24) located in the second container. Applicant should note that the intended use of a device (i.e. for photoactivation of a biological fluid) is not a structural limitation, and hence cannot be relied upon to patentably distinguish apparatus claims. It is well settled that a recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus satisfying the claimed structural limitations. *Ex parte Masham*, 2 USPQ2d 1647 (1987). Applicant should further note that the activated carbon and/or polymeric resin of Chou is inherently capable of removing excess photochemical agents from a fluid, since these appear to be the same types of materials utilized by Applicant in the recited device (see page 38, lines 7-9 of the specification).

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior

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art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 25, 27, 33, 34, 40 and 41 are rejected under 35

U.S.C. 103(a) as being unpatentable over Chou. Chou discloses

the claimed invention with the exception of the recited

additional containers (claims 25, 27, 33 and 34), and the holder

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(claims 40 and 41). However, it would have been obvious to one of ordinary skill in the art at the time the invention was made to provide the reference system with storage containers for the raw and purified water, in order to facilitate handling of the water undergoing treatment in this reference system. Again, Applicant should note that the intended content (i.e. for holding a photochemical agent) of a container is not a structural limitation, and hence cannot be given weight in determining patentability of an apparatus claim. Also, it would have been obvious to one of ordinary skill in the art at the time the invention was made to provide the reference system with a "holder" (e.g. brackets, support members, etc.) in order to prevent undesirable movement of this system during its use.

Claim 29 is objected to as being dependent upon a rejected base claim, but would be allowed if rewritten in independent form, because the references of record do not teach or fairly suggest a device of the type recited which includes an adsorbent

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material contained within a semipermeable pouch housed in the second container. Claims 37 and 38 are also objected to as being dependent upon a rejected base claim, but would be allowed if rewritten in independent form, because the references of record do not teach or fairly suggest a device of the type recited which includes a container comprising an overwrap of the type recited.

Furthermore, Applicant is advised that claims 25 and 33 would also be allowed if amended to positively recite the presence of photochemical agent in the recited container, and if further rewritten in independent form to include all of the limitations of the base claim and any intervening claims.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to I. Cintins whose telephone number is (703) 308-3840. The examiner can normally be reached on Monday through Friday from 8:30 AM to 5:00 PM.

The fax phone numbers for this art unit are: (703) 872-9311 for "Official" faxes after Final Rejection; (703) 872-9310 for all other "Official" faxes; and (703) 872-9492 for "Draft" and other "Unofficial" faxes.

Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is (703) 308-0661.

  
Ivars C. Cintins  
Primary Examiner  
Art Unit 1724

I. Cintins  
April 13, 2003